

Article 65. Emergency Planning and Right-to-Know.

A. General Regulations

28-65-1. General provisions.

(a) Any reference by these rules and regulations to standards, procedures or requirements of 40 CFR Parts 350, 355, 370 and 372 as in effect on July 1, 1998 shall constitute a full adoption by reference of the part, subpart and paragraph so referenced, including any notes and appendices associated therewith, unless otherwise specifically stated in these rules and regulations. When the same word is defined both in the Kansas statutes and in any federal regulation adopted by reference in the rules and regulations and the definitions are not identical, the definition prescribed in the Kansas statutes shall control.

(b) When used in any provisions adopted from 40 CFR Parts 350, 355, 370 and 372 as in effect on July 1, 1998:

(1) the words "the United States" shall be replaced with the words "state of Kansas";

(2) "environmental protection agency" shall be replaced with the "Kansas department of health and environment";

(3) "administrator" or "regional administrator" shall be replaced with the "secretary of the department of health and environment"; and

(4) "federal register" shall be replaced with "Kansas register." (Authorized by and implementing K.S.A. 65-5704; effective, T-88-62, Dec. 30, 1987; effective May 1, 1988; amended Nov. 22, 1993; amended June 4, 1999.)

28-65-2. Definitions.

(a) "Commission" means the Kansas state emergency response commission established under K.S.A. 65-5703.

(b) "Department" means the Kansas department of health and environment.

(c) "Extremely hazardous substance"

means a substance listed in the appendices to 40 CFR part 355, emergency planning and notification, as in effect July 1, 1998 or on the list of Kansas reportable chemicals authorized by K.S.A. 65-5704.

(d) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person, or by any person which controls, is controlled by, or under common control with, such person. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

(e) "Federal act" means Title III of the superfund amendments and reauthorization act of 1986, P.L. 99-499, and the emergency planning and community right-to-know act of 1987.

(f) "Hazardous chemical" has the meaning given to that term by 40 CFR part 370, hazardous chemical reporting: community right-to-know, as in effect July 1, 1998.

(g) "Kansas tier II form" or "tier II form" means the hazardous chemical inventory form developed by the Kansas department of health and environment.

(h) "Kansas tier II software" means the computer software developed for the Kansas department of health and environment to allow facilities to file Kansas tier II information by diskette.

(i) "Material safety data sheets (MSDS)" means reporting sheets required under the occupational safety and health act at 15 USC 651 et seq., hazard communication program 29 CFR parts 1910.1200, as in effect on July 1, 1998.

(j) "Operator" means the owner or owner's designee who is director of a business, service, or industrial concern and conducts the affairs or manages an activity.

(k) "Owner" means the person in whom is vested ownership, dominion,

possession or title of property; proprietor.

(l) "Petroleum fuels" means the following refined petroleum products:

- (1) gasoline;
- (2) gasohol;
- (3) aviation fuels; and

(4) diesel #1 and #2. (Authorized by and implementing K.S.A. 65-5704; effective, T-88-62, Dec. 30, 1987; effective May. 1, 1988; amended Nov. 22, 1993; amended Nov. 28, 1994; amended June 4, 1999.)

28-65-3. Submitting notifications and reports.

(a) Except as provided in K.A.R. 28-65-4 (e)(3), each notification and report required to be submitted to the commission under sections 302, 311 and 312 of the federal act and these regulations shall be completed using the Kansas tier II form or the Kansas tier II software. The Kansas tier II form or a diskette containing the Kansas Tier II information developed from the Kansas Tier II software shall be submitted to the hazardous chemical information unit, bureau of air and radiation of the department.

(b) The toxic chemical release inventory report required under section 313 of the federal emergency planning and community right-to-know act and these regulations shall be completed using the federal form R. Each federal form R required to be submitted to state officials under section 313 of the federal act shall be submitted to the hazardous chemical information unit, bureau of air and radiation of the department prior to July 1 of each year for the previous calendar year.

(c) Each emergency release notification submitted pursuant to the requirements of section 304 of the federal act shall be submitted to the division of emergency preparedness of the adjutant general's department.

(d) Hazardous chemical and extremely hazardous substance information submitted

under the provisions of section 302, 311 and 312 of the federal act and subsection (a) of this regulation may be submitted in an alternative aggregate format that includes more than one facility if the following conditions are met.

(1) The facilities reported shall be under common ownership or a common operator.

(2) A separate listing including the names and locations of the facilities to which the Kansas tier II form is to apply shall be submitted with the report.

(3) The chemical types and quantities reported on the Kansas tier II form shall be similar and representative of those present at all facilities listed.

(4) The proposed alternative aggregate format shall have been previously reviewed and approved by the department for compliance with the requirements of these regulations.

(e) Each owner or operator of a facility required to report under this regulation shall notify the department within 60 days following:

(1) a change in the name, address, or both, of the owner or operator responsible for filing the facility report; or

(2) facility closure. (Authorized by and implementing K.S.A. 65-5704; effective, T-88-62, Dec. 30, 1987; effective May 1, 1988; amended, T-89-19, May 27, 1988; amended Sept. 26, 1988; amended Nov. 22, 1993; amended Nov. 28, 1994; amended June 4, 1999.)

28-65-4. Fees.

(a) Except as provided in subsections (d) and (e) of this regulation, each owner or operator of a facility required to report under section 312 of the federal act and K.A.R. 28-65-3 shall pay an annual report fee based upon the sum of the maximum daily reportable quantities of extremely hazardous substances or hazardous chemicals, or both,

present at the facility as reported on the Kansas tier II form. These fees shall be calculated on forms provided by the department using the tables in paragraphs (c)(1) and (c)(2) of this regulation as appropriate. The fees required under this subsection shall be submitted to the department prior to March 1 of each year at the time of submission of the Kansas tier II form.

(b) Each owner or operator of a facility required to file the toxic chemical release form required under section 313 of the federal act and K.A.R. 28-65-3 shall pay an annual report fee based upon the total quantity of chemicals released as reported on the federal form R. These fees shall be calculated on forms provided by the department using table 3 in paragraph (c)(4) of this regulation. The fees required under this section shall be submitted to the department prior to July 1 of each year at the time of submission of the federal form R.

(c) Fees payable under subsection (a) of this regulation shall be determined using tables 1 and 2 below as applicable.

(1) Fees on the total maximum daily reportable quantity of extremely hazardous substances listed on the Kansas tier II form required under subsection (a) shall be determined using table 1 as follows:

Table 1.

Sum of the maximum daily Amounts of all extremely Hazardous substances reported (pounds)	Annual fee
1 - 9,999	\$ 25
10,000 - 999,999	\$ 50
1,000,000 or greater	\$150

(2) Fees on the total maximum daily reportable quantity of hazardous chemicals listed on the Kansas tier II form required under subsection (a) shall be determined using table 2 as follows:

Table 2.

Sum of the maximum daily Amounts of all hazardous Chemicals reported (pounds)	Annual fee
10,000 - 99,999	\$ 25
100,000 - 999,999	\$ 50
1,000,000 - 9,999,999	\$150
10,000,000 or greater	\$300

(3) For the purposes of this subsection the term "hazardous chemical" shall not include any extremely hazardous substances or sand, gravel, clay, salt or brine or other comparable substances as approved by the department in the calculation of fees.

(4) Fees payable under subsection (b) of this regulation on the total quantity of chemicals released reported on the federal form R shall be determined as follows:

Table 3.

Sum of the total chemical Releases reported (pounds)	Annual fee
100 - 19,999	\$ 250
20,000 - 99,999	\$ 700
100,000 - 999,999	\$1,700
1,000,000 or greater	\$3,000

(d) Each owner or operator of an oil or gas well that is required to report under section 312 of the federal act and K.A.R. 28-65-3 shall pay an annual fee of \$25. For the purposes of this subsection, the term "well" shall have the meaning given such term by K.S.A. 55-150. The fee required under this section shall be submitted to the department prior to March 1 of each year at the time of submission of the information required on the Kansas tier II form.

(e) Each owner or operator of a facility that contains petroleum fuels as defined in K.S.A. 28-65-2 that is required to report under section 312 of the federal act and K.A.R. 28-65-3 shall be exempt from the fee requirements of subsection (a) of this regulation as applicable to petroleum fuels in storage tanks provided:

(1) The storage tank is registered under the provisions of K.A.R. 28-44-16 or

K.A.R. 28-44-29; and

(2) the owner or operator has paid an annual registration fee in compliance with K.A.R. 28-44-17 or 28-44-28; and

(3) the owner or operator has submitted the necessary information to the department on the special storage tank program forms provided by the department to comply with the reporting requirements of section 312 of the federal act, K.A.R. 28-65-3, K.A.R. 28-44-16 and K.A.R. 28-44-29.

(f) Each owner or operator of a facility that qualifies for a fee exemption under subsection (e) of this regulation that has chemicals present other than petroleum fuels that are reportable under section 312 of the federal act and K.A.R. 28-65-3 shall pay annual report fees in compliance with subsection (a) of this regulation as applicable to the remaining chemicals.

(g) Each owner or operator of a facility that qualifies for a fee exemption under subsection (e) may elect to comply with the provisions of these regulations by submitting the Kansas tier II form in lieu of submitting the required information on the special storage tank program form. Such owners or operators that elect to submit the Kansas tier II form shall calculate and pay annual report fees in compliance with subsection (a) of this regulation as applicable.

(h) Each owner or operator subject to these regulations shall not be assessed an annual report fee in total greater than \$3000 during any single report year excluding late fees.

(i) All fees shall be remitted by check, draft, or money order payable to the department and shall be non-refundable. Any owner or operator may make an aggregate payment covering more than one facility by a single check, draft, or money order provided a statement accompanies each aggregate payment which indicates the individual facility names, addresses, and fees for each facility for which payment is made.

(j) Each owner or operator of a facility subject to these regulations shall not be charged a fee for chemical information submitted on a voluntary basis beyond that required under K.A.R. 28-65-3 provided that the optional nature of the information is clearly marked in the appropriate box on the Kansas tier II form. (Authorized by and implementing K.S.A. 65-5704; effective Nov. 22, 1993; amended Nov. 28, 1994.)